Supreme Court of the United States.

OCTOBER TERM, 1887.

NO. 390.

FRANK M. DENT, *Plaintiff in Error*,

vs.

THE STATE OF WEST VIRGINIA, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

"SALUS POPULI SUPREMA LEX."

(*Bacon max., reg. 12.*)

BRIEF FOR THE DEFENDANT IN ERROR.

ALFRED CALDWELL, COUNSEL.

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The statements of this case, contained in the brief of the gentleman upon the other side and in the opinion of the Supreme Court of Appeals of West Virginia printed in the record, are so full and accurate that I deem it unnecessary for me to try to add anything to them. The material portions of the statute of West Virginia in question in this case are also fully set out in the same opinion. I, with hesitancy, attempt the work of supplementing the learned and elaborate opinion of the Supreme Court of Appeals of West Virginia, in this case, with whatever I have to offer, becaue the opinion shows throughout the painstaking research and exhaustive consideration, which is characteristic of the distinguished judges upon that bench, and which must of necessity lead to a logical and correct conclusion. My apology must be the fact that, since the case was decided in the West Virginia Court, this Court has made some decisions very much in point, and because the question of alleged conflict between the West Virginia act "concerning the public health" and the Constitution of the United States has been argued more elaborately by the counsel for the plaintiff in error in his brief filed in this Court, than in any previous brief or argument.

The federal question supposed to be involved in this case is an alleged conflict between the provisions of the act of the legislature of West Virginia, entitled "An Act concerning the public health," requiring certain qualifications before a person can practice medicine in the State, and that por-

tion of the 14th amendment to the Constitution of the United States declaring the priceless limitation of governmental power, that "No State shall deprive any person of life, liberty or property without due process of law."

This constitutional provision against the deprivation of life, liberty or property without due process of law, so common in the organic laws of the States of this Union, has been so often construed and so often decided not to infringe upon the police power of the legislative assemblies, that courts have been inclined of late years to treat with scant courtesy an argument based upon an alleged conflict between such provision and an enactment plainly within the police power.

The words of the Constitution, hereinbefore quoted, are not susceptible of an accurate definition, applicable to every case. (*Davidson* vs. *New Orleans*, 96 U. S. 97.)

It is said in *Missouri Pacific Railway Co.* vs. *Humes*, (115 U. S. 519,)

"In England the requirement of due process of law, in cases where life, liberty and property were affected, was originally designed to secure the subject against the arbitrary action of the Crown, and to place him under the protection of the law. The words were held to be the equivalent of "law of the land." And a similar purpose must be ascribed to them when applied to a legislative body in this country; that is, that they are intended, in addition to other guaranties of private rights, to give increased security against the arbitrary deprivation of life or liberty, and the arbitrary spoliation of property. But from the number of instances in which these words are invoked to set aside the legislation of the States, there is abundant evidence, as observed by Mr. Justice Miller in the case referred to, "that there exists some strange misconception of the scope of this provision, as found in the Fourteenth Amendment." It seems, as he states, to be looked upon "as a means of bringing to the test of the decision of this Court the abstract opinions of every unsuccessful litigant in a State Court, of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded." This language was used in 877, and now after the lapse of eight years, it may

be repeated with an expression of increased surprise at the continued misconception of the purpose of the provision."

This was said on November 23, 1885, more than two years ago.

What is the police power of the State legislature?

"There is an implied assent on the part of every member of society, that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good." Broom's Legal Maxims, 1.

It would be difficult to define just what laws are authorized by the police power, so that the definition would be comprehensive enough to embrace all cases.

The police power is sometimes called the law of overruling necessity. It was a well settled principle of the common law that to prevent great public calamity, such as spread of fire, the ravages of a pestilence, &c., private property might be lawfully taken or destroyed for the relief or safety of the public.

Says Chancellor Kent, (2 Kent's Com. 338,):

"If a common highway be out of repair, a passenger may lawfully go through an adjoining enclosure. So it is lawful to raze houses to the ground to prevent the spreading of a conflagration. These are cases of urgent necessity, in which no action lay at common law by the individual who sustained the injury; but private property must in many other instances, yield to the general interest."

Blackstone defines this power, "as the due regulation and domestic order of the Kingdom, whereby individuals of the state, like members of a well regulated and well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious and inoffensive in their respective stations." 4 Black. Com. 162.

Puffendorf calls this law of necessity an exception to all human ordinances and constitutions, and claims that it there-

fore gives a right of doing many things otherwise forbidden. (B. 2, ch. 6.)

In *Thorpe* vs. *R. R. Co.*, (27 Vt. 149,) Ch. J. Redfield observes:

"This police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State."

This Court long since recognized this power and held as follows:

"Every law comes within the description of a police regulation which concerns the welfare of the whole people of a State, or any individual within it, and whose operation is confined within the territorial limits of the State, and on persons or things therein."

Mayor of N. Y. vs. *Miln*, 11 Pet. 102.

In Maine it was said that "all laws for the protection of lives, limbs, health and quiet of the person, and for the security of all property within the State, fall within this general power of the government." *State* vs. *Noyes*, 47 Maine 189.

This power is called by this Court "the power of the State * * * * to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity." *Barbier* vs. *Connolly*, 13 U. S. 31.

A late, if not the latest, definition of police power by this Court is contained in its opinion in *Mugler* vs. *Kansas*, announced December 5, 1887, and reported in the *Reporter*, Vol. XXV., No. 1, January 4, 1888, and is expressed in the following terse language:

"It belongs to that department," (referring to the legislative branch of the Government,) "to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

Adopting the language repeatedly used by this Court in speaking of this power, it may be stated to be the right of the Legislature to make enactments in good faith for the protection and preservation of the public health, the public morals, or the public safety.

But however it may be described and however ill its boundaries may be marked in general, all definitions and authorities seem to agree that enactments having in view the preservation of the public health, in the broadest signification of the words, are within the police powers of State Legislatures.

That the West Virginia law under consideration relates to the preservation of the public health, does not admit of serious question. The provisions objected to, respect the qualifications of physicians and surgeons and the conditions under which they can procure certificates authorizing them to practice. The practice of their profession by physicians and surgeons has a most intimate relation to life, limb, health and the well being of the people. The exigencies of life require all classes to seek their services. The ignorant as well as the wise are subject to their ministrations. Of all trusts confided to professional men, the physician and surgeon has the most important in his care.

They are of necessity often called to render professional aid at times when such aid is so urgently required, that no opportunity is afforded for the selection of the practitioner known to be the best equipped and the most skillful in his calling. For these reasons, among the many which might be adduced, it is imperatively demanded by the public interest that only men possessing the proper degree of skill and learning should be permitted to practice medicine and surgery. It is unquestionably within the power of State legislatures to shield the people, under the exercise of police power, against the manifold evils resulting from the practicing of the beneficent calling of the physician and surgeon by empirics, quacks and charlatans.

Being within the police power, the West Virginia act does not discriminate against any person or class of persons, and is therefore not inhibited by anything contained in the 14th amendment.

The persons entitled to practice according to the act are (1) the graduates of reputable medical colleges in the school of medicine to which the person desiring to practice belongs, no discrimination being made against any school of medicine; (2) the persons who have practiced medicine in the State continuously for the period of ten years prior to the eighth day of March, one thousand eight hundred and eighty-one; and (3) those who pass an examination before such board of physicians as is specified in the act.

The enactment is in every feature praiseworthy for entire fairness and a credit to the distinguished and disinterested physicians through whose efforts, in the interest of the public and for the advancement of the dignity and standing of their profession, it was passed by the legislature.

The rule of law that physicians and surgeons must be learned in their profession and skilled practitioners is of great antiquity. Centuries ago they were required to possess skill and learning.

Although the statute must be commended for its reasonableness, whether it is reasonable or unreasonable, wise or unwise, is a legislative and not a judicial question, and does not affect the matter now under consideration. *Hedderich* vs. *State*, 101 Ind., 564; Cooley on Con. Lim. (5th ed.) 197.

At page 197, Judge Cooley says:

"Nor can a court declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social, or political rights of the citizen, unless it can be shown that such injustice is prohibited, or such rights guaranteed or protected by the constitution."

Again at page 201, he says:

"The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason, and expediency with the law-making power."

If the act is within the police power of the State it is not prohibited by the provision of the 14th amendment before mentioned.

This constitutional provision, in its most essential features, was derived from the thirty-ninth chapter of the Magna Charta granted by King John on June 15, 1215. That chapter was in the following words in the original:

"39. *Nullus liber homo capiatur, vel imprisonetur, aut utlagetur, aut exuletur, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae.*"

Translated into English the chapter reads:

"39. No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or anyways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land."

Creasey on the English Constitution, 134.

In the charter as issued by Henry III., and confirmed by subsequent kings, some words were added to the provision to make it more explicit. It is now commonly translated:

"No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed, nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land."

Lord Coke, in his commentary on this chapter, points out that the chapter declaring that none "shall be disseised of his free tenement, his liberties, or his free customs," means that neither the King nor others shall seize upon any freeman's possessions, and that a man shall not be put from his livelihood without answer. That the word "liberties" has several significations, as the laws of the realm, privileges

bestowed by the King, and the natural freedom possessed by the subjects of England. (See Coke's Second Institute.)

The following portion of the historical review of the regulation of the practice of medicine, by William Drayton, Esq., in the *American Law Register* of November, 1884, shows how ancient such regulation has been, and that no question as to the constitutional right of Parliament to regulate medical practice has ever been raised, notwithstanding the provisions of the great charter:

"In England the practice of the healing art during the middle ages was, as a rule, confined to the priests—the only educated class—but ignorant pretenders to science abounded then as now, and as early as 1422, 9 H. V., a statute was proposed enacting that 'No one shall use the mysterie of fysyk unless he hath studied in some university, and is at least a bachelor in that science (the penalty being 10 *l*), and every woman who shall practice physick shall suffer the same penalty.' This seems never to have had the effect of an act of parliament, but in the 3 H. VIII., c. 9, appears an act for the appointing of physicians and surgeons, which, after reciting the necessity of skill in the arts of medicine and surgery, and deploring that they are daily exercised by a great multitude of ignorant persons, enacts that 'no person within the city of London, nor within seven miles of the same, take upon himself to exercise or occupy as a physician or surgeon except he be first examined, opproved and admitted by the Bishops of London or the Dean of Pauls for the time being, calling to him or them four doctors of physic.' This act also provided for the admission of physicians outside of these limits, by an examination by the bishop of the diocese. The superintendence of the bishops was taken away by a royal charter dated September 28, 1518, incorporating the Royal College of Physicians, confirmed by the statute of 14 H. VIII. The acts of 32 H. VIII. and 1 Mary, sec. 2, conferred upon this college great privileges, and forbade any one to practice in London, or seven miles distant, save those licensed by the college, upon penalty of 5*l*. a month. All persons were likewise forbidden to practice beyond seven miles radius, unless they were first examined by the president and three of the elects, except they had become graduates of Oxford or Cambridge.

In Bonham's case, 8 Co. 107, it was resolved that none can be punished for practicing physic in London but by forfeiture 5*l*, and if any practice physic for less than a month he shall forfeit nothing. It was ruled by Lord Holt, in College of Physicians v. Levett, 1 Ld.

Raym 472, where the defendant alleged that he was a graduate doctor of Oxford, that such could not practice within London, or seven miles distant, without the license of the College of Physicians. College of Physicians v. West, 10 Mod. 353. With regard to surgeons and apothecaries, the ancient guild of barber surgeons was incorporated as early as 1 Ed. IV., and the society of apothecaries received their charter 15 Jac. 1. These charters were confirmed by various enactments—a list of them will be found in Wilcox on the Law of the Medical Professions. In the year 1858 the Medical Act became a law, establishing the General Council of Medical Education and Registration of the United Kingdom, and regulating the qualification of practitioners in medicine and surgery. Although a medical man possess every title and qualification which any university can bestow, unless his name be duly entered on the Medical Registry he cannot recover fees or charges. Turner v. Reynal, 14 C. B., N. S., 328; Blogg v. Pinker, Ryl. and M., N. P. 125. According to the English common law, a physician could not recover for services rendered, (Chorley v. Bolcott, 4 T. R. 317); the same principle applied to barristers: Morris v. Hunt, 1 Chitty, 544; Kennedy v. Broun, 13 C. B., N. S., 677; s. c. 2 Am. Law Reg., N. S. 357; Poucher v. Norman, 3 B. and C. 745. In Veitch v. Russell, 3 Q. B. 928, it was held that a physician was entitled to recover if he could prove an actual contract, or if he acted as a surgeon as well as a physician, he could recover for services rendered in that capacity. But in Gibbon v. Budd, 2 H. and C. 92, Baron Bramwell held that a physician registered under the Medical Act, who is not prohibited by any by-law of his college, can recover without an express contract, the presumption being that he attended the patient, not for an honorarium, but for fees, the right to which could be enforced by an action.

As long as an apothecary did not charge separately for his advice, he might attend a patient and make up and administer proper medicines, without having a license from the College of Physicians or the prescription of a physician, and in so doing did not infringe the privilege of the college nor violate the provisions of 14 and 15 Hen. VIII,; Rose v. College of Physicians, 5 Bro. Parl. C. 553; Towne v. Lady Gresley, 3 C. and P. 581; he could charge for his attendance as well as for the medicine; Handley v. Henson, 4 C. and P. 110; Morgan v. Hallens, 8 Ad. and E. 489.

But the College of Physicians may grant a license under the act without restricting their licentiate from compounding and supplying for profit the medicines they may prescribe. Atty.-Gen. v. Royal College of Physicians, 30 L. J. Ch. 157.

The above acts of parliament, and the decisions under them, show

that the different departments of medical practice are carefully regulated in England. Nor has any question as to the constitutionality of these restrictions ever been raised.

In this country the legislation on the subject has been by no means harmonious. Several States have failed to pass any statute on the subject; others have passed acts making the practice of medicine and surgery without a license or registration, a penal offense; other statutes making the receipt of fees dependent on satisfying the requirements of the act; while in New York, which had passed an act as early as 1787 on the subject, repealed all laws on the subject in 1844 and re-enacted them in 1874; and Massachusetts, where the requirements of the act of 1817 were particularly strict, repealed all of these in 1838."

Since the decision of this case by the Supreme Court of Appeals of West Virginia, a number of decisions have been rendered by Courts of last resort, in several States, upon health laws or medical practice acts.

In Nebraska, under the laws of 1881 of that State, providing that no person shall be entitled to registration as a physician or to practice medicine "unless he or she shall be possessed of one of the qualifications named in this section," it was held, that no one could practice without possessing one of those qualifications, even though he had an M. D. degree from a regular College, *Dogge* vs. *State*, 17 Neb. 140.

In the *State* vs. *Gregory*, (83 Mo. 123; s. c. 53 Am. 565,) it was held, that, under a statute regulating the practice of medicine and surgery and requiring an applicant for leave to practice, who has a diploma, to furnish the State Board of Health satisfactory proof that it was granted by some legally chartered institution in good standing, the granting of leave by the board is discretionary and will not be enforced by *mandamus*; citing and approving *State* vs. *State Med. Examining Board*, 32 Minn. 324; s. c. 50 Am. 575.

See also *People* vs. *State Board of Dental Examiners*, Supreme Court of Illinois, May term, 1884.

"The statute of Illinois, prescribing qualifications of physi-

cians, which states that those who have practiced for ten years are not within the requirements of the act, grants no exclusive privilege and is not unconstitutional."

Williams vs. *People*, Sup Court of Illinois, May 12, 1887; the *Reporter*, Vol. XXIV., No. 8. Aug. 24, 1887.

The constitutionality of police regulations was affirmed in a number of recent cases. In Alabama, (*McDonald* vs. *State*,) July 20, 1887; the *Reporter*, Vol. XXIV., No. 16, Oct. 19, 1887,) it was decided that a Statute authorizing the creation of a board of examiners of locomotive engineers, is constitutional.

In the *People* vs. *West*, (106 N. Y. 293,) it is held, that a statute which prohibits the selling or brining of any milk, diluted with water or adulterated, to a butter or cheese manufactory to be manufactured and declares a violation of the prohibition to be a misdemeanor, is a valid exercise of the legislative power. In that case the "time-honored and memorable declaration that no person shall be deprived of life, liberty or property without due process of law" was invoked to destroy the Statute.

The Supreme Court of Indiana, January 25, 1887, in *Eastman* vs. *State*, (The *Reporter*, Vol. 23, 433), say that a statute requiring a physician to take out a license before practicing, and making it a misdemeanor to practice medicine without having procured a license, is constitutional.

An ordinance forbidding the construction of a wooden building in a town, even when so enforced that, under its authority, a building in the course of construction has been demolished, is not assailable as a violation of the Fourteenth Amendment of the Federal Constitution, in that it takes property without due process of law. *Klingler* vs. *Bickel*, Sup. Court of Penna., October 31, 1887, The *Reporter*, Vol. 25, No. 2, January 11, 1888.

But if any doubt could exist as to the constitutionality of act in question in this case, such doubt could be set at rest by the decisions of this Court.

The following cases, it is respectively insisted, are decisive of the constitutionality of the West Virginia Act:

Mugler vs. *Kansas*, the *Reporter*, Vol. 25, No. 1, page 1; *Barbier* vs. *Connolly*, 113 U. S. 27; *Soon Hing* vs. *Crowley*, ib 703; *Morgan* vs. *Louisiana*, 18 U. S. 455; *Beer Co.* vs. *Massachusetts*, 97 U. S. 25; *Patterson* vs. *Kentucky*, Ib. 501; the *Slaughter House Cases*, 16 Wall. 36; *Bartemeyer* vs. *Iowa*, 18 Wall. 129; *Bradwell* vs. *State*, 16 Wall. 130.

The State Legislatures cannot by contract divest themselves of the power to make police regulations. *Beer Co.* vs. *Massachusetts*, 97 U. S. 25, and *Butcher's Union Co.* vs. *Crescent City Co.*, 111 U. S. 751

The counsel for the plaintiff in error cites two cases decided by this Court, *Cummins* vs. *Missouri*, 4 Wall. 320, and *ex parte* Garland, ib. 333, seemingly to show that the estate which one may acquire in a profession is property. This may be fully admitted, and yet such an admission has no effect upon the right of the Legislature of West Virginia to exercise its police power and pass the statute we are considering. The language of Mr. Justice Field in those cases must be read by the light of the peculiar facts before him. There is no parallelism between the Missouri law, in Cummins' case requiring the taking of a test oath as a condition precedent to his exercising his priestly offices, and the West Virginia statute, or between the act of Congress which required Mr. Garland to take a similar oath before being permitted to practice law in the United States Courts, and the enactment complained of in this case.

Our act does not prevent any qualified person from practicing the profession of medicine. It is no bill of attainder or *ex post facto* law. Cummins and Garland could neither of them comply with the requirements of the laws they complained of. The plaintiff in error, if unable to pass an examination after six years practice, could by study and ap-

plication qualify himself, after any number of failures. He was not perpetually driven from his chosen calling.

The plaintiff in error, by his counsel, complains of the hardships which might be inflicted upon him by an arbitrary board of examiners, while the record does not show, although he had been a practicing physician for more than six years and had a diploma of a medical college, (whether the same was a respectable college or not,) that he ever tendered himself for examination under the act. It may justly be concluded that, a person who is so distrustful of his own professional knowledge and skill as to neglect or refuse to undergo the examination, is manifestly an improper person to invest with the important trusts of a physician and surgeon, and belongs to the class from whose ministrations it was the beneficent and laudable purpose of the statute to protect the public. It will be noticed that the statute provides for an examination either before the two members of the board for the Congressional district, or the State Board of Health itself. This was probably to prevent the members for the Congressional district from venting ill will through an unfair examination or arbitrary action, by enabling the person desiring a certificate to go before the whole board for examination. There can be no valid objection to the board being composed, as the statute requires, of physicians appointed by the Governor, who have graduated from reputable medical colleges and practiced medicine for not less than twelve years continuously. Ch. 93 Acts of W. Va., 1882.

But it is claimed, in substance, for the plaintiff in error, that because he was engaged in practice when the act was passed, he is not subject to its provisions by reason of the supposed effect of the 14th amendment. If such was the law the most salutary results from police statutes and regulations would be prevented. For instance, the slaughtering of stock in improper places in New Orleans could never have been stopped, if the business had been conducted at a pro-

hibited locality, before the passage of the prohibiting statute. But see *Slauyhter House Cases, supra.*

The same contention, in effect, was made in *Mugler* vs. *Kansas*, (*supra*,) and this court, by Mr. Justice Harlan said:

"Upon this grouud—if we do not misapprehend the position of defendants—it is contended that the primary and principal use of beer is as a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such establishments will become of no value as property, or, at least, will be materially diminished in value, if not employed in the manufacture of beer for every purpose, the prohibition upon their being so employed is, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law. In other words, although the State, in the exercise of her police powers may lawfully prohibit the manufacture and sale, within her limits, of intoxicating liquors to be used as a beverage, legislation having that object in view cannot be enforced against those who, at the time, happen to own property, the value of which consists in its fitness for such manufacturing purposes, unless compensation is first made for the diminution in the value of their property, resulting from such prohibitory enactments. This interpretation of the Fourteenth Amendment is inadmissible. It cannot be supposed that the States intended, by adopting that amendment, to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community."

And further on in the same opinion, the Court also says:

"It is true that, when the defendants in these cases purchased or erected their breweries, the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance, or come under any obligation, that its legislation upon that subject would remain unchanged. Indeed, as was said in *Stone* vs. *Mississippi*, 101 U. S., the supervision of the public health and the public morals is a governmental power, 'continuing in its nature,' and 'to be dealt with as the special exigencies of the moment may require;' and that; 'for this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself.' So in *Beer Co.* vs. *Massachusetts*, 97 U. S., 32: 'If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature

cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer.' "

It is said in *People* vs. *West*, (106 N. Y.):

"The validity of the statute in question is assailed on the ground that it converts what is or may be an innocent act into a criminal offence, and that it is a restriction upon that natural liberty possessed by every owner of property to use it in any lawful way. The power of the legislature to define and declare public offences is unlimited, except in so far as it is restrained by constitutional provisions and guaranties. * * * * * * * * * * * * * * It is not a good objection to a statute prohibiting a particular act, and making its commission a public offence, that the prohibited act was before the statute lawful, or even innocent, and without any elements of moral turpitude. It is the province of the legislature to determine, in the interest of the public, what shall be permitted or forbidden, and the statutes contain very many instances of acts prohibited the criminality of which consists solely in the fact that they are prohibited, and not at all in their intrinsic quality."

The police power of the State is not so restricted that the legislature, when prohibiting by penal statute the doing of acts or the conduct of business detrimental to the public health, the public morals or the public safety, cannot prevent a person doing such acts or conducting such business previous to the passage of the statute, from continuing to do so afterwards. It is of the very essence of the police power and one of the chief reasons for its existence, that it not only prevents evils to the public in future, but also suppresses the same evils if existing at the time of the enactment. In most cases its exercise causes loss or injury to the property of some individual engaged in a prohibited occupation or coming in some way within the prohibition of the law, but as has been shown by the authorities before cited, such loss or injury must be borne for the benefit of the public and cannot render the legislative enactment void by reason of any constitutional limitation.

That such enactments, as we have in question, meet with the unqualified approbation of the best minds in the medical

profession, cannot be doubted when we read the rules, established for the conduct of the members of that profession, breathing in every part the loftiest, purest sentiment. The following may befound in the Code of Medical Ethics, adopted by the American Medical Association in 1847:

"A physician should not only be ever ready to obey the calls of the sick, but his mind ought also to be imbued with the greatness of his mission, and the responsibility he habitually incurs in its discharge. These obligations are the more deep and enduring because there is no tribunal other than his own conscience to adjudge penalties for carelessness or neglect. Physicians should, therefore, minister to the sick with due impressions of the importance of their office; reflecting that the ease, the health, and the lives of those committed to their charge, depend on their skill, attention and fidelity."

"In no trade or occupation, do mankind rely on the skill of an untaught artist; and in medical, confessedly the most difficult and intricate of the sciences, the world ought not to suppose that knowledge is intuitive."

"Every individual, on entering the profession, as he becomes thereby entitled to all its privileges and immunities, incurs an obligation to exert his best abilities to maintain its dignity and honor, to exalt its standing, and to extend the bounds of its usefulness."

"A regular medical education furnishes the only presumptive evidence of professional abilities and acquirements, and ought to be the only acknowledged right of an individual to the exercise and honors of the profession."

The candid mind will admit the truth of the following statement of the obligations of the public to physicians, contained in such Code:

"The benefits accruing to the public, directly and indirectly, from the active and unwearied beneficence of the profession, are so numerous and important, that physicians are justly entitled to the utmost consideration and respect from the community. The public ought likewise to entertain a just appreciation of medical qualications; to make a proper discrimination between true science and the assumption of ignorance and empiricism, and to afford every encouragement facility for the acquisition of medical education."

It is respectfully contended that the West Virginia act

concerning the public health is a lawful and constitutional attempt to discharge, in a measure, these obligations of the public to physicians.

Respectfully submitted,

ALFRED CALDWELL,

Attorney-General of West Virginia, and Counsel for Defendant in Error.